APPENDIX II.

[Vide item II (2) on page 71 supra.]

A Bill further to amend the Madras General Sales Tax Act, 1939.

(As passed by the Assembly.)

WHEREAS it is expedient further to amend the Madras General Sales Tax Act, 1939, for the purposes hereinafter appearing; It is hereby enacted as follows :— Madras Act IX of 1939.

Short title and commencement.

1. (1) This Act may be called the Madras General Sales Tax (Amendment) Act, 1947.

(2) This Act shall come into force at once; and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Fort St. George Gazette*, appoint.

Amendment of section 2, Madras Act IX of 1939.

2. In section 2 of the Madras General Sales Tax Act, 1939 (hereinafter referred to as the said Act)— Madras Act IX of 1939.

(i) clause (*a*) shall be relettered as clause (*a*-1), and before the clause as so relettered, the following clause shall be inserted, namely :—

" (*a*) 'agricultural or horticultural produce' shall not be deemed to include tea."

(ii) in clause (*b*) (which defines " dealer "), Explanation (2) and the figure and brackets '(1)' in Explanation (1) shall be omitted ;

(iii) in clause (*c*) (which defines " goods "), after the words " all materials, commodities and articles ", the following words shall be added, namely :—

" including those to be used in the construction, fitting out, improvement or repair of immovable property or in the fitting out, improvement or repair of movable property ; and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ; " ;

(iv) after clause (*g*), the following clause shall be inserted, namely :—

" (*g*-1) 'registered dealer' means a dealer registered under this Act ; " ;

(v) in clause (*h*) (which defines " sale ")—

(*a*) in the first paragraph, after the words " valuable consideration ", the following words shall be inserted, namely :—

" and includes also a transfer of property in goods involved in the execution of a works contract," ;

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(b) the Explanation shall be numbered as Explanation (1), and after the Explanation as so numbered, the following Explanation shall be added, namely :—

Central Act III of 1930.

Explanation (2).—Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this Province, wherever the contract of sale or purchase might have been made—

(a) if the goods were actually in this Province at the time when the contract of sale or purchase in respect thereof was made, or

(b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this Province at any time after the contract of sale or purchase in respect thereof was made." ;

(vi) the Explanation to clause (*i*) (which defines "turnover") shall be numbered as Explanation (1), and in that Explanation—

(a) items (i), (ii) and (iii) shall be renumbered as items (ii), (iii) and (iv) respectively, and the following shall be inserted as item (i), namely :—

"(i) the amount for which goods are sold shall, in relation to a works contract, be deemed to be the amount payable to the dealer for carrying out such contract, *less* such portion as may be prescribed of such amount, representing the usual proportion of the cost of labour to the cost of materials used in carrying out such contract ;" ;

(b) the word "and" at the end shall be omitted ;

(vii) after clause (*i*), the following clause shall be inserted, namely :—

"(*ii*) 'works contract' means any agreement for carrying out for cash or for deferred payment or other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immovable property or the fitting out, improvement or repair of any movable property ;".

3. For section 3 of the said Act, the following section shall be substituted, namely :— **Substitution of new section for section 3, Madras Act IX of 1939.**

"3. (1) Subject to the provisions of this Act,— **Levy of taxes on sales of goods.**

(a) every dealer shall pay for each year a tax on his total turnover for such year ; and

(b) the tax shall be calculated at the rate of three pies for every rupee in such turnover.

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(2) Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed ; and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods, and shall be in addition to the tax to which he is liable under sub-section (1) on his total turnover for the year.

Description of the goods.	Rate of tax for every rupee in the turnover relating to such goods.
(1)	(2)
(i) Motor vehicles including motor cars, motor taxi-cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries.	Six pies.
Chassis of motor vehicles	
Component parts of motor vehicles	
Articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of motor vehicles, not being such articles as are ordinarily also used for other purposes than as parts or accessories of motor vehicles.	
(ii) Refrigerators and air-conditioning plants ..	Three pies.
(iii) (*a*) Wireless reception instruments and apparatus and component parts thereof, including all electrical valves, accumulators, amplifiers and loudspeakers which are not specially designed for purposes other than wireless reception.	
(*b*) Radio gramophones	
(iv) (*a*) Cinematographic, photographic and other cameras, projectors and enlargers ; lenses and other parts of and accessories to such cameras, projectors and enlargers ; and films, plates, paper and cloth required for use therewith.	
(*b*) Binoculars and opera glasses	
(v) All electrical goods, instruments, apparatus and appliances, including fans and lighting bulbs, electrical earthenware and porcelain, and all other accessories.	
(vi) Any pen, pencil, or pen and pencil set, sold for twenty rupees or more.	
(vii) All clocks, time-pieces and watches ; and parts thereof.	

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

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(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed :

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :—

Provided that—

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year had been the same as in the previous year."

4. For sections 5 and 6 of the said Act, the following sections shall be substituted, namely :— Substitution of new sections 5, 6 and 6-A for sections 5 and 6, Madras Act IX of 1939.

" 5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees— Exemptions and reductions of tax in certain cases.

(i) the sale of cotton, of handspun yarn and of any cloth woven on handlooms wholly with handspun yarn and sold by persons dealing exclusively in such cloth, shall be exempt from taxation under section 3, sub-section (1) ;

(ii) the sale of cotton yarn other than handspun yarn shall be liable to tax under section 3, sub-section (1), only at two points in the series of sales by successive dealers as may be prescribed and only at the rate of one-fourth of one per cent of the turnover at each of the two points ;

(iii) the sale of any cloth woven on handlooms wholly or partly with mill yarn shall be exempt from taxation under section 3, sub-section (1), if the sale is to a wholesale or retail dealer in the Province, or if the sale is for delivery outside the Province and delivery is actually so made ;

(iv) the sale of bullion and specie shall be liable to tax under section 3, sub-section (1), only at such single point in the

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series of sales by successive dealers as may be prescribed and only at the rate of one-fourth of one per cent of the turnover at that point ;

(v) the sale of tea grown by the seller or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be exempt from taxation under section 3, sub-section (1), if the sale is for delivery outside the Province and delivery is actually so made ;

(vi) the sale of hides and skins, whether tanned or untanned and of newspapers, that is to say, of periodical works containing public news or comments on public news, shall be liable to tax under section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed.

Power of Government to notify exemptions and reductions of tax.

6. (1) The Provincial Government may, by notification in the *Fort St. George Gazette,* make an exemption, or reduction in rate, in respect of any tax payable under this Act—

(i) on the sale of any specified class of goods, at all points or at any specified point or points in the series of sales by successive dealers ; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover.

(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1)—

(*a*) may extend to the whole Province or to any specified area or areas therein ;

(*b*) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees.

Liability to tax of persons not observing conditions of licence, etc.

6-A. If any restrictions or conditions prescribed under section 5 or notified under section 6 are contravened or are not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out or renewed, if a licence is not taken out or renewed by the dealer or if any of the conditions of a licence taken out or renewed by him are contravened or are not observed, the sales of the dealer, with effect from the commencement of the year in which such contravention or non-observance took place, may be assessed to tax or taxes under section 3, as if the provisions of section 5 or of the notification under section 6, as the case may be, did not apply to such sales and notwithstanding that a licence, if any, taken out or renewed by the dealer continued or continues to be in force during the year."

Amendment of section 8 Madras Act IX of 1939.

5. In section 8 of the said Act (which relates to the licensing and exemption of agents)—

(i) for the words and figure " exempt from the tax under section 3 ", the words and figure " exempt from the tax or taxes payable under section 3 " shall be substituted ;

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(ii) after the proviso, the following proviso shall be added, namely :—

" Provided further that the commission or brokerage agreed upon and specified in the accounts represents the entire remuneration payable to the agent, apart from legitimate incidental charges actually incurred by him and specified in the accounts, in respect of insurance, transport, loading and unloading, godown rent, interest, correspondence, telegrams, the use of the telephone, and the like :

Provided also that the burden of proving that a transaction is exempt, by virtue of this section, from the tax or taxes payable under section 3, shall be on licensee."

6. After section 8 of the said Act, the following sections shall be inserted, namely :— Insertion of new sections 8-A and 8-B in Madras Act IX of 1939.

" 8-A. (1) Every dealer whose turnover in any year is not less than seven thousand five hundred rupees shall, and any other dealer may, get himself registered under this Act, and for that purpose, shall submit an application for registration, to such person, in such manner, within such period, and accompanied by such fee not exceeding six rupees, as may be prescribed. Registration of dealers.

(2) A dealer who has got himself registered in pursuance of sub-section (1) is entitled to have his registration cancelled, if he is able to establish to the satisfaction of the prescribed authority that his turnover in each of two consecutive years was less than seven thousand five hundred rupees.

(3) A dealer shall, until his registration is cancelled, be liable to pay the fee prescribed as aforesaid, for every year subsequent to that in which he applied for registration.

8-B. (1) No person who is not a registered dealer shall collect any amount by way of tax under this Act ; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed : Collection of tax by dealers.

Provided that Provincial Government may exempt persons who are not registered dealers from the provisions of this sub-section until such date, not being later than the 1st day of April 1948, as the Provincial Government may direct.

(2) Every person who has collected or collects any amount by way of tax under this Act, on or after the 1st day of April 1947, shall pay over to the Provincial Government within such time and in such manner as may be prescribed, all amounts so collected by him if they are in excess of the

tax, if any, paid by him for the period during which the collections were made ; and, in default of such payment, the amounts may be recovered as if they were arrears of land revenue."

Amendment of section 9, Madras Act IX of 1939.

7. In section 9 of the said Act (which relates to submission of returns and assessment)—

(i) in sub-section (1), for the words "return or returns of his turnover", the words "return or returns relating to his turnover" shall be substituted, and for the words and figures "specified in the rules made under sub-section (2) of section 3," the word "prescribed" shall be substituted ;

(ii) in sub-section (2), clause (*b*), for the words and figures "shall proceed to determine the turnover in accordance with the rules made under sub-section (2) of section 3", the words "shall assess the dealer to the best of his judgment" shall be substituted.

Substitution of new section 12, Madras Act IX of 1939.

8. For section 12 of the said Act, the following section shall be substituted, namely :—

Revision.

"12. (1) The Board of Revenue may in its discretion call for and examine the record of any order passed or proceeding recorded by any authority, officer or person under the provisions of this Act, including sub-section (2), for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order in reference thereto as it thinks fit.

(2) Powers of the nature referred to in sub-section (1) may also be exercised by such authority or officer and in such class of cases as may be prescribed, including cases where an inferior authority or officer has exercised its or his powers under this sub-section.

(3) The powers conferred by sub-sections (1) and (2) may be exercised by the Board of Revenue or by the authority or officer concerned, as the case may be, *suo motu* at any time or on application preferred within six months of the passing or recording of the order or proceeding in question.

(4) Nothing contained in this section shall apply to the orders or proceedings of any Court or Magistrate."

Amendment of section 13, Madras Act IX of 1939.

9. In section 13 of the said Act (which relates to the maintenance of accounts)—

(i) for the words and figure "Every dealer and every person licensed under section 8," the words "Every registered dealer and every person licensed under this Act," and for the words "true and correct account showing the value of the goods sold and bought by him," the words "true and correct account in one of the languages of the Province, namely, Tamil, Telugu, Malayalam, Kannada or Hindustani or in English, showing the goods sold and bought by him and the value thereof, goods of each of the kinds specified in section 3, sub-section (2), being shown separately" shall be substituted ;

(ii) the proviso shall be omitted.

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10. After section 14 of the said Act, the following section shall be inserted, namely :—

Insertion of new section 14-A in Madras Act IX of 1939.

" 14-A. In the case of any person carrying on the business of buying or selling goods in the Province but residing outside it (hereinafter in this section referred to as a 'non-resident'), the provisions of this Act shall apply subject to the following modifications and additions, namely :—

Act to apply to non-resident dealers with certain modifications and additions.

(i) In respect of the business of the non-resident, his agent residing in the Province shall be deemed to be the dealer.

(ii) The agent of a non-resident shall be assessed to tax or taxes under this Act at the rate or rates leviable thereunder in respect of the business of such non-resident in which the agent is concerned, irrespective of the amount of the turnover of such business being less than the minimum specified in section 3, sub-section (3).

(iii) Without prejudice to his other rights, any agent of a non-resident who is assessed under this Act in respect of the business of such non-resident may retain out of any moneys payable to the non-resident by the agent, a sum equal to the amount of the tax or taxes assessed on or paid by the agent.

(iv) Where no tax would have been payable by the non-resident in respect of his business in the Province by reason of the turnover thereof being less than the minimum specified in section 3, sub-section (3), he shall be entitled to have the amount of the tax or taxes paid by his agent refunded to him on application made to the assessing authority concerned, or where more than one such authority is concerned to such one of the authorities as may be authorized in this behalf by the Provincial Government by general or special order.

(v) Such application shall be made within twelve months from the end of the year in which payment was made by or on behalf of the non-resident of the tax or taxes or any part thereof."

11. In section 15 of the said Act which relates to offences and penalties :—

Amendment of section 15 Madras Act IX of 1939.

(i) in clause (*b*), for the words " to pay the tax due from him within the time allowed," the words " to pay within the time allowed, any tax assessed on him, or any fee due from him, under this Act " shall be substituted ;

(ii) in clause (*d*), for the words " any tax due under this Act," the words " any tax assessed on him, or any fee due from him, under this Act " shall be substituted ;

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(iii) clause (*e*) shall be re-lettered as clause (*h*), and the following shall be inserted as clauses (*e*), (*f*) and (*g*), namely :—

" (*e*) fails to submit an application for registration as required by section 8-A, sub-section (1), or

(*f*) collects any amount by way of tax under this Act, in contravention of the provisions of section 8-B, sub-section (1), or

(*g*) fails to pay the amounts specified in section 8-B, sub-section (2), within the prescribed time, or " ;

(iv) the words " and where the breach is a continuing breach, to a further fine which may extend to fifty rupees for every day after the first during which the breach continues " shall be omitted ; and in lieu thereof the following words shall be inserted, namely :—

" and in the case of a conviction under clause (*b*), (*d*), (*f*) or (*g*), the Magistrate shall specify in the order the tax, fee or other amount, which the person convicted has failed or evaded to pay or has wrongfully collected, and the tax, fee or amount so specified shall be recoverable as if it were a fine."

Insertion of new section 16-A in Madras Act IX of 1939.

12. After section 16 of the said Act, the following section shall be inserted, namely :—

Assessments, etc., not to be questioned in prosecutions.

" 16-A. The validity of the assessment of any tax, or of the levy of any fee or other amount, made under this Act or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding, whether under this Act or otherwise."

Repeal of section 20, Madras Act IX of 1939.

13. Section 20 of the said Act (which contains a transitional provision which has become spent) shall be omitted.

Repeal of sections 3 and 4, Madras Act XVII of 1943, and of Madras Acts X of 1944, VII of 1945 and IX of 1945.

14. Sections 3 and 4 of the Madras Finance (No. 2) Act, 1943, and the whole of the following Acts, namely, the Madras General Sales Tax (Amendment) Act, 1944, the Madras General Sales Tax (Amendment) Act, 1945, and the Madras General Sales Tax (Second Amendment) Act, 1945, are hereby repealed.

Madras Act XVII of 1943. Madras Act X of 1944. Madras Act VII of 1945. Madras Act IX of 1945.